FILE COPY

FILED
OCT 4
CHARLES ELMORE

No. 441

In the Supreme Court of the United States

OCTOBER TERM, 1934

UNITED STATES MORTGAGE COMPANY and MORTGAGE GUARANTEE COMPANY, PETITIONERS,

vs.

MARY E. MATTHEWS and JOHN MATTHEWS

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION AND BRIEF IN SUPPORT THEREOF

JAMES THOMAS,
WILLIAM L. MARBURY, JR.,
Counsel for Petitioners

TABLE OF CONTENTS.

	PAGE.
PETITION FOR WRIT OF CERTIORARI	1
Summary Statement of Matter Involved	1
Reasons Relied on for the Allowance of the Writ	5
BRIEF IN SUPPORT OF PETITION	9
Opinions of Courts Below	9
Jurisdiction	9
Statement of the Case	10
Specification of Errors	13
Argument	14
Summary of Argument	14
Point A	
The Assent Contained in the Mortgage Expressly or by Necessary Implication Contemplates Amendments or Additions to the Original Act	14
Point B	
The Act Operates Only Upon the Remedy and Does Not Impair the Substantive Rights Under the Mortgage Contract	16
Point C	
An Economic Condition Constituting an Emergency Existing (and continuing), the Act Is a Legitimate Exercise of the Police Power of the State	20
CONCLUSION	22
APPENDIX	23

CITATIONS.

Statutes:	
Chapter 56, Acts of 1933 (Special Session)	2, 3
Chapter 123, Acts of 1898, Secs. 720-732	2
Sec. 237 Judicial Code as amended by Acts Feb. 13, 1925, Chapter 229, Sec. 1 (U. S. C. A. Title 28, Sec. 334(b))	10
Chapter 57, Acts of 1933 (Special Session)	21
Bagby's Code of Md., 1924, Art. 66, Secs. 6-10	21
Cases:	
Ahren v. Ijams, 158 Md. 412, 418	11, 19
Blaisdell v. Home Bldg. & Loan Assn., 189 Minn. 426	6
Block v. Hirsch, 256 U. S. 135	6, 7, 21
Bronson v. Kinzie, 1 Howard (42 U. S.) 311, 315	18

	PAGE
Chastleton Corp. v. Sinclair, 264 U. S. 543	7
Conkey v. Hart, 14 N. Y. 22	6, 16
Cronise v. Clark, 4 Md. Ch. 403	11
Durham Realty Co. v. La Fetra, 230 N. Y. 429	21
Funkhauser v. J. B. Preston Co., 290 U. S. 163	14
Henley v. Meyers, 215 U. S. 373	16
Home B. & L. Assn. v. Blaisdell, 290 U. S. 398	6, 7, 21
Marcus Brown Holding Co. v. Feldman, 256 U. S. 170	6, 7, 21
Mason v. Haile, 12 Wheaton (25 U. S.) 370	16
People ex rel. Durham Realty Co. v. La Fetra, 230 N. Y. 429	6
Richardson v. Owings, 86 Md. 663	11, 12
Scott et al. v. District Court et al., 15 N. D. 259	6, 15
State, etc., v. Circuit Court (S. D. 1933), 249 N. W. 631	16
Stocking v. Hunt (N. Y.), 3 Denio 274	6
Waggoner v. Flack, 188 U. S. 595, 602	18
W. B. Worthen Co. v. Thomas, 292 U. S. 426	21
Williams v. Williams, 7 Gill (Md.) 302	11
Woltz et al. v. Asheville Safe Deposit Co. et al., 206 N. C. 239	6

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. .....

UNITED STATES MORTGAGE COMPANY and MORTGAGE GUARANTEE COMPANY, PETITIONERS,

vs.

MARY E. MATTHEWS and JOHN MATTHEWS

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

To the Honorable, CHARLES EVANS HUGHES, *Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.*

Your Petitioners respectfully show:

I

SUMMARY STATEMENT OF MATTER INVOLVED

This case presents the question of whether parties to a mortgage contract, by stipulating therein that the mortgage may be foreclosed under a particular form of statutory ex parte proceeding, can deprive the State of Maryland of the power to enact laws for the purpose of regulating abuses of this procedure which are contributing to a grave economic emergency.

The purpose of this petition is to have this Court review a decision of the Court of Appeals of Maryland, holding invalid Chapter 56 of the Acts of 1933, Special Session, of the General Assembly of Maryland. That Act sought to restrict the use of a particular statutory form of procedure for the foreclosure of mortgages to the holders of not less than a 25% interest in any mortgage. The Court of Appeals of Maryland struck down this legislation on the ground that it impaired the obligation of contracts in violation of Section 10 of Article 1 of the Constitution of the United States, although holding at the same time that the Act did not deprive the holders of less than a 25 per cent. interest in a mortgage of the equal protection of the laws, for the reason that the classification adopted by this legislation was reasonably adapted to meet "an evil found by the Legislature to exist," namely "that under the provisions of the existing law the holders of minute fractions of a mortgage were making use of its provisions in cases where the real and substantial interests of the large majority holders in a given mortgage would have their security, and the opportunity of realizing the full amount of the mortgage, seriously endangered."

The remedy which the Act of 1933 was intended to regulate was provided by Chapter 123 of the Acts of 1898, Section 720-732, inclusive, now codified as Section 720-732 inclusive of Article 4 of the Code of Public Local Laws of Maryland, title "Baltimore City,"

sub-title "Mortgages" (1930 edition). Section 720 provides in part:*

> In all cases of conveyances * * * wherein the mortgagor shall declare his assent to the passing of a decree for the sale * * *, it shall be lawful for the mortgagee, or his assigns, at any time after filing the same to be recorded, to submit to either of the Circuit Courts of Baltimore City the said conveyances or copies thereof * * * who shall thereupon forthwith decree that the mortgaged premises shall be sold at any one of the periods limited in said conveyances for the forfeiture of said mortgages * * *.

There was no amendment of this section after its enactment until the passage of Chapter 56 of the Acts of 1933, Special Session, which provides in part as follows:

> In all cases submitted to either of the Circuit Courts of Baltimore City for the passage of a decree as provided for in Section 720 aforesaid, no such decree shall hereafter be passed during the period of emergency hereinafter declared, unless such application is made or concurred in by the record holders of not less than 25% of the entire unpaid mortgage debt, it being hereby declared to be the intent of this section, during the period this section is effective, that the holder or holders of a fractional interest in an entire mortgage debt of less than 25% of the entire interest, shall not have recourse to the summary and ex parte remedies given under Section 720.

---

* Section 720 of Chapter 123 of the Acts of 1898 and Chapter 56 of the Acts of 1933, Special Session, are printed in full in the appendix.

> That the period of the emergency herein declared as a matter of legislative determination shall be the period of time from the date this act takes effect to the first day of June, 1935.
>
> That this Act is declared to be an emergency law and necessary for the immediate preservation of the public health and safety, * * *.

On July 30, 1932, Mary E. Matthews and John Matthews acquired an undivided 500/2950 share in a certain mortgage dated July 30, 1925, from Walter H. Warner to Mortgage Guarantee Company, a Delaware corporation, on property located in Baltimore City (Record p. 8). This mortgage contained the following language (Record p. 5):

> And the said mortgagor does hereby declare his assent to the passing of a decree by the Circuit Court of Baltimore City or the Circuit Court No. 2 of Baltimore City, for the sale of the property hereby mortgaged, in accordance with Sections 720 to 732 inclusive of Chapter 123 of the Laws of Maryland, passed at the January session 1898 or any amendments or additions thereto.

On December 22, 1933, seven days after the amendatory act became effective, the Respondents petitioned the Circuit Court No. 2 of Baltimore City for a decree and the appointment of a Trustee to make sale of the property (Record p. 2), whereupon United States Mortgage Company, the then owner of the equity of redemption in the property covered by the mortgage, and the aforesaid Mortgage Guarantee Company, the holder of record, or the duly authorized representa-

tive of the holders of record of approximately 83% of the unpaid mortgage debt, appeared and were permitted to intervene in the proceedings, setting up the provisions of Chapter 56 of the Acts of 1933, Special Session, as a reason why the petition of the Appellee should not be granted (Record p. 10).

The Circuit Court No. 2 of Baltimore City, in its written opinion (Record p. 97), held said Act to be unconstitutional and entered a decree for the sale of the mortgaged property. From this decree the Petitioners appealed to the Court of Appeals of Maryland, which held the Act to be unconstitutional and void, on the sole ground that it conflicted with Section 10 of Article 1 of the Constitution of the United States (Record p. 116).

II

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

A. The case presents a federal question of substance involving the construction of the contract clause of the Constitution not heretofore determined by this Court, as the Court of Appeals of Maryland determines that an ex parte, summary, special and purely statutory form of procedure, if stipulated for in a mortgage contract, becomes a portion of the obligation of said contract, and the State thereafter can no longer repeal or amend said remedy and relegate the parties to the usual procedure provided by law or in equity for the enforcement of such contracts, or the mortgage lien given thereunder.

B. The decision of the Court of Appeals of Maryland, striking down this legislation enacted during a period of grave emergency and which was declared by the Legislature of the State to be necessary for the immediate preservation of the public health and safety, presents grave constitutional questions, upon which the highest courts of several states have reached a different conclusion; notably, North Dakota, *Scott et al.* vs. *District Court et al.*, 15 N. D. 259; South Dakota, *State, etc.* vs. *Circuit Court* (1933, not yet officially published), 249 N. W. 631; Minnesota, *Blaisdell* vs. *Home Building and Loan Asso.*, 189 Minn. 422; North Carolina, *Woltz et al.* vs. *Asheville Safe Deposit Co. et al.*, 206 N. C. 239, (all relating to legislation regulating mortgage foreclosures); New York, *Stocking* vs. *Hunt*, (N. Y.) 3 *Denio* 274; *Conkey* vs. *Hart*, 14 N. Y. 22; *People ex rel. Durham Realty Company* vs. *LaFetra*, 230 N. Y. 429, (all relating to legislation restricting the use of summary proceedings by landlords) and is not in accord with the decisions of this Court, including, among others, *Block* vs. *Hirsch*, 256 U. S. 135; *Marcus Brown Holding Co.* vs. *Feldman*, 256 U. S. 170, and *Home Building and Loan Asso.* vs. *Blaisdell*, 290 U. S. 398.

C. The decision of the Court of Appeals of Maryland strikes down legislation reasonably adapted to prevent abuse of a summary statutory remedy found by the Legislature to contribute to a grave economic emergency, the Court adopting the theory that the contract clause does not yield to the police power in this respect, and that the constitutionality of legislation

enacted during a period of great disturbance or so-called emergency must be determined without regard to its reasonableness or the existence of conditions necessitating the passage of laws safe-guarding the public health, safety and welfare,* in direct disregard of numerous decisions of this Court including *Block* vs. *Hirsch,* 256 U. S. 135; *Marcus Brown Holding Co.* vs. *Feldman,* 256 U. S. 170; *Chastleton Corp.* vs. *Sinclair,* 264 U. S. 543, and *Home Building and Loan Asso.* vs. *Blaisdell,* 290 U. S. 398.

WHEREFORE your Petitioners pray that a Writ of Certiorari be issued under the seal of this Court, directed to the Court of Appeals of Maryland, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals of Maryland, had in the case numbered and entitled on its docket No. 50, April Term, 1934, United States Mortgage Com-

* Judge Digges, in speaking for the Court, said (Record, p. 125): "With reference to the state of an emergency which is declared by the Legislature to exist, in the preamble of the Acts under consideration, we think it wise to observe that it can have no effect upon the constitutionality of the Acts. We have no doubt that the Legislature gave expression to a generally recognized fact that an emergency in the economic affairs existed, but the constitutionality of the Acts cannot be tested or decided upon that ground. If the law under consideration was unconstitutional in the absence of an emergency, in our opinion it cannot be held to be constitutional because of any fancied or real emergency, but its constitutionality must be tested in the same way as if it had been passed in times of economic prosperity."

pany and Mortgage Guarantee Company, Appellants, vs. Mary E. Matthews and John Matthews, Appellees, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and that the judgment herein of such Court of Appeals of Maryland be reversed by the Court, and for such further relief as to this Court may seem proper.

UNITED STATES MORTGAGE COMPANY
AND MORTGAGE GUARANTEE COMPANY.

By

JAMES THOMAS,

WILLIAM L. MARBURY, JR.,

Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. .....

UNITED STATES MORTGAGE COMPANY and MORTGAGE GUARANTEE COMPANY, PETITIONERS,

vs.

MARY E. MATTHEWS and JOHN MATTHEWS

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I

OPINIONS OF COURTS BELOW

The opinion of the Court of Appeals of Maryland has not yet been officially reported, but was published in the Atlantic Reporter, Volume 173, page 903. It also appears on page 116 of the Record. The opinion of the Circuit Court No. 2 of Baltimore City is not officially reported; it was published in The Daily Record (Baltimore, Maryland) on the 23rd day of March, 1934, and it appears on page 97 of the Record.

II

JURISDICTION

1. The date of the decree to be reviewed is July 6, 1934, on which date the Court of Appeals of Maryland

rendered its decision, the mandate of the Court of Appeals of Maryland was transmitted to the Circuit Court No. 2 of Baltimore City thirty days thereafter, at which time the decree originally entered in the case became final in all its attributes (Record p. 115).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 237 of the Judicial Code as amended by the Acts of February 13, 1925, Chapter 229, Section 1 (U. S. C. A., Title 28, Section 344 (b)).

The nature of the case and the decision of the Court of Appeals of Maryland is such as to bring the case within the terms of the statutory provision aforesaid, in that the validity of a statute of the State of Maryland was assailed as unconstitutional and the Court of Appeals of Maryland held the same to be unconstitutional and void on the sole ground that it was in conflict with Section 10 of Article 1 of the Constitution of the United States.

III

STATEMENT OF THE CASE

The statement of the case made in the preceding petition under I entitled "SUMMARY STATEMENT OF MATTER INVOLVED" is hereby adopted and made a part of this brief.

The proceeding for the foreclosure of a mortgage under the Act of 1898 is ex parte until after the decree

and a sale under the decree. In order to obtain the decree it is only necessary to file the mortgage and petition for the decree. No summons is necessary and no notice is required to be given to the mortgagor or any person claiming under him. No prior or subsequent mortgagors or encumbrancers need be made parties. No testimony need be taken, no hearing had and no affidavits or other proof of title to the mortgage debt submitted. The mortgagee is entitled to the decree at any time after the recording of the mortgage and without regard to default. If there has been no default, the decree is entered prospectively. If no default occurs, it never becomes effective, but, should there be a default afterward occurring, the decree is enforced. *Ahren v. Ijams,* 158 Md. 412, 418. The Act applies only to Baltimore City and has been aptly described as a summary and peculiar proceeding prescribed by the Legislature. *Cronise v. Clark,* 4 Md. Ch. 403, 408.*

The right of an assignee of any part of the mortgage debt to a decree under the Act was established in *Richardson v. Owings,* 86 Md. 663.

The practice has arisen among many mortgage or other loan companies, in making mortgage loans on

* It is sometimes said that the Act creates a special or limited jurisdiction in the two Circuit Courts of Baltimore City or the decree is loosely referred to as a consent decree. Both of these points were decided in the negative in the early case of *Williams vs. Williams,* 7 Gill (Md.) 302, in which it was further stated, page 305, that the statute simply provides a summary mode of reaching the decree.

large buildings or other projects, the size of which are too large to be taken and held as a whole by individual or institutional investors, of splitting up the entire mortgage debt, and in lieu of issuing notes or bonds secured by the mortgage, to assign undivided interests therein to individual investors. Under the construction of the aforementioned statute in *Richardson v. Owings, supra,* any of these investors were entitled to apply for a decree for the sale of the mortgaged premises.

The Legislature evidently realized the inherent danger, not only to their fellow investors, but to the public welfare of the precipitate action of reckless holders of undivided interests in mortgages of insignificant amounts, in securing decrees under the peculiar remedy afforded by the statute. That the Legislature thought the condition one of paramount importance is shown from the preamble and legislative findings incorporated in the amendatory Act (see Appendix).

In the trial Court testimony was taken to substantiate the legislative findings of an emergency (Record pp. 34-97), which shows the following facts:

(1) That there is no market for large real estate in Baltimore City; (2) that partial assignments of mortgages are frequently made in the case of mortgages on large properties; (3) that the aggregate amount of such partial assignments runs into millions of dollars; (4) that these assignments are in the hands of thousands of investors scattered throughout Maryland and

nearby states, frequently in denominations as small as $50.00; (5) that this summary method of foreclosure sale confers upon small investors an opportunity to inflict enormous losses upon their co-investors through precipitating a sale of mortgaged property on a market where there are no bidders or buyers, in an ex parte proceeding and upon notice which is utterly inadequate to enable their co-investors to take any effective measures for their protection; (6) that this practice tended further to demoralize an already prostrate real estate market, the condition of which was of vital importance to savings banks, insurance companies and fiduciary institutions, and in fact, the entire public, and (7) that the Act was being taken advantage of by heedless investors.

The Court of Appeals of Maryland justified the legislative finding when it stated (Record p. 125): "We have no doubt that the Legislature gave expression to a generally recognized fact that an emergency in economic affairs existed."

IV

SPECIFICATION OF ERRORS

The Court of Appeals of Maryland erred in holding Chapter 56 of the Acts of 1933, Special Session, to be unconstitutional and void as in conflict with Section 10 of Article I of the Constitution.

V

ARGUMENT

SUMMARY OF THE ARGUMENT

The Petitioners' contention is that Chapter 56 of the Acts of 1933 does not impair the obligation of the mortgage contract, in that

POINT A

The assent contained in the mortgage expressly or by necessary implication contemplates *amendments or additions* to the original Act.

POINT B

The Act operates only upon the remedy and does not impair the substantive rights under the mortgage contract.

POINT C

An economic condition constituting an emergency existing (and continuing), the Act is a legitimate exercise of the police power of the State.

POINT A

THE ASSENT CONTAINED IN THE MORTGAGE EXPRESSLY OR BY NECESSARY IMPLICATION CONTEMPLATES *AMENDMENTS OR ADDITIONS* TO THE ORIGINAL ACT

Where the contract clause is invoked we believe this Court will determine for itself what the contract is and whether it has been impaired. *Funkhauser v. J. B. Preston Co.*, 290 U. S. 163.

The assent to the passing of a decree as the same appears in the mortgage (Record p. 5) is "in accord-

ance with Sections 720 to 732 inclusive of Chapter 123 of the Laws of Maryland, passed at the January Session 1898 or any *amendments or additions thereto.*" (Italics ours).

It would seem that the intention of the parties was that the assent was to be of such legal significance and effect as was given to it by the Act referred to, as amended or added to, at the time that the remedy was exercised, particularly when there were no existing amendments or additions to the Act which the parties could have had in mind at the time that the mortgage was executed. The Court of Appeals of Maryland declined to accept this construction and while admitting that at the time the language was incorporated in the mortgage there had been no amendments or additions to these sections of the Act, found that the intention of the parties in employing that language embraced only such amendments or additions as had been made prior to the execution of the mortgage. (Record p. 121). This we regard as unsound as it is not to be presumed that parties, in their choice of language in a formal instrument, will refer expressly to amendments or additions to a statute which do not exist, and that in using the language which they did, they must have had in contemplation future amendments or additions.

Stipulations in mortgages for a method of foreclosure created or regulated by statute have been construed by other Courts to refer to the remedy as existing at the time it was resorted to. *Scott et al. v. District Court et al.*, 15 N. D. 259; *State,*

etc. v. Circuit Court, (S. D. 1933) 249 N. W. 631. This construction of the assent would also be in accordance with the presumption, often entertained by this Court, that parties make their contracts with reference to the power of the State (within proper limits) to regulate the methods of procedure in actions thereon. *Henley v. Myers,* 215 U. S. 373. Such a presumption must of necessity arise in respect to stipulations for remedies given by statute, otherwise the parties by their contract can override the law-making power of the State.*

POINT B

THE ACT OPERATES ONLY UPON THE REMEDY AND DOES NOT IMPAIR THE SUBSTANTIVE RIGHTS UNDER THE MORTGAGE CONTRACT

In the opinion of the Court of Appeals it is said: ~~(R. pp. ——)~~

"We must bear in mind that this legislation deals solely with a remedy, and the Legislature

---

**Mason v. Haile,* 12 Wheaton (25 U. S.) 370. In *Conkey v. Hart,* 14 N. Y. 22, in construing a statute abolishing distress for rent in its application to existing leases, stipulating for this remedy, the Court said, pages 29, 30, "In the view taken by the Supreme Court, the contract in substance contains a stipulation between these parties that this State shall continue in force the legal process of distraining for rent. If this is a subject on which parties can contract, and if their contracts when made become by virtue of the Constitution of the United States superior to the power of the Legislature, then it follows, that whatever at any time exists as part of the machinery for the administration of justice may be perpetuated if the parties choose so to agree. * * * Every such stipulation is in its own nature conditional upon the lawful continuance of the process."

doubtless concluded that the remedies theretofore afforded for every fractional owner of a mortgage should be modified or changed so that the particular remedy could only be exercised by those mortgagees, singly or in combination, who controlled or represented 25 per cent. of the mortgage debt. It was doubtless brought to the legislative attention that under the provisions of the existing law the holders of minute fractions of a mortgage were making use of its provisions in cases where the real and substantial interests of the large majority holders in a given mortgage would have their security, and the opportunity of realizing the full amount of the mortgage, seriously endangered. This being in the legislative mind is demonstrated by the preamble of the acts in question. This was an evil found by the Legislature to exist, and the purpose of the classification was to diminish the evil by determining that this remedy should be only available to those holding at least 25 per cent. of the mortgage debt then unpaid.'' (Record p. 126).

These findings of the Court appear to describe a characteristic case for the appropriate exercise of the acknowledged power of the State to regulate the remedies for the enforcement of contracts. The suggestion that when a summary remedy is abolished or suspended, litigants must be left with some other remedy equally as summary, or that ''summary'' and ''coercive effect'', as applied to remedies, are synonymous, is a novel one. This Court, at an early date, stated that it was not necessary that the new or substituted or remaining remedy be as con-

venient or as expeditious as the old and although the new or remaining remedy may be less convenient than the old one and may, in some degree, render the recovery of debts more tardy and difficult, yet it will not follow that the law is unconstitutional. Mr. Chief Justice TANEY in *Bronson v. Kinzie,* 1 HOWARD (42, U. S.) 311, 315.

While it has been stated that the remedy for the enforcement of a contract enters into the contract itself, the instances are limited to where an endeavor has been made to so change the existing remedy that there is no effective and enforceable one left, or, the remedy is so far impaired that the party desirous of enforcing the contract is left practically without any efficient means of doing so. *Waggoner v. Flack,* 188 U. S. 595, 602.

The Courts below, in concluding that the legislation now under review impaired the obligation of the contract, relied upon the fact that the particular remedy under the Act of 1898 was expressly incorporated in the mortgage, and that the only remedies remaining to the respondents were antiquated or cumbersome. But it is evident that the language of the mortgage does not create a remedy but merely removes an obstacle to the exercise of a remedy already provided by the statute. No remedy flows from the assent. The remedy flows from the statute, which contains as a condition to its exercise the requirement of the mortgagors' assent. As to the contention that the mortgagors' remaining remedies are cumbersome,

it should be enough to say that the respondents still have available to them every remedy which is available to the ordinary litigant, in law or in equity, for the purpose of collecting a debt or enforcing a lien upon real property. If these remedies suffice for other litigants, they ought not to be held to be so unsubstantial or lacking in coercive power as to leave this type of mortgagees without effective and enforceable remedies for establishing their rights.

The various methods available to a mortgagee to enforce his rights of payment against the mortgaged property in equity were referred to in the opinion of the Court of Appeals of Maryland (Record p. 122). Some further discussion of these modes will be found in the opinion of the Circuit Court No. 2 of Baltimore City (Record p. 102 et seq.). The mortgagee always has the choice of whether he will proceed by bill in equity or by summary proceeding. *Ahrens v. Ijams,* 158 Md. 412, 417. The opinion of the Court of Appeals in this respect is not clear, in that, it conveys the impression that the holder of a partial interest in a mortgage is left with no method of procedure except in cooperation with others holding not less than 25% of the total mortgage debt. This is not the case, as the holder of any interest in the mortgage, no matter how small, may proceed by bill in equity for foreclosure without the cooperation or consent of any other holders of an interest in said mortgage. The restrictive provisions of the 1933 Act apply only to the summary proceedings.

POINT C

AN ECONOMIC CONDITION CONSTITUTING AN EMERGENCY EXISTING (AND CONTINUING), THE ACT IS A LEGITIMATE EXERCISE OF THE POLICE POWER OF THE STATE

We take it to be settled that the constitutional prohibition will not be so construed as to prevent a limited and temporary interposition with respect to the enforcement of mortgage contracts when an urgent public need, demanding relief, arises through economic causes, and that, therefore, the Court of Appeals of Maryland was in error when they stated (Record p. 175) that the constitutionality of the Act of 1933, Special Session, must be tested in the same way as if it had been passed in times of economic prosperity. The Court's opinion recognizes that the Legislature gave expression to a generally recognized fact that an emergency in economic affairs of the State existed at the time that the legislation was enacted and that this emergency continued to exist at the time of the entry of the decree is amply demonstrated by the testimony in the case. If the remedy was unusual, as much can be said of the conditions existing which it sought to alleviate and even though it be found that the Act in question in different times and under different conditions might be held to infringe too closely upon the constitutional prohibition to be upheld, yet in view of the emergency and the existence of the situation which it was designed to relieve, it seems that it was well within the protective power lodged in the State of

Maryland. *Home Building & Loan Asso. v. Blaisdell,* 290 U. S. 398; *W. B. Worthen Co. v. Thomas* 292 U. S. 426; *Block v. Hirsch,* 256 U. S. 135; *Marcus Brown Holding Co. v. Feldman,* 256 U. S. 170; *Durham Realty Co. v. LaFetra,* 230 N. Y. 429.

The Court of Appeals of Maryland, in its opinion, made some mention of a power of sale which was also contained in this mortgage. The cause went up to said Court on an appeal from a decree entered under the Act of 1898, and the validity of Chapter 57 of the Acts of 1933, Special Session, attempting to regulate the exercise of these powers, was in no way involved or presented in either the lower or upper courts. It may be mentioned, however, that the power of sale is another form of summary, ex parte foreclosure authorized and regulated by statutes now codified as Article 66, Sections 6 to 10 inclusive of Bagby's Annotated Code of Maryland, 1924. The power of sale and its exercise by the mortgagee, its successors or assigns or by its or their attorney, is dependent entirely upon the statute for its validity. Independently of the statute, the power means nothing. It would, therefore, seem that the constitutionality of the amendatory legislation to this remedy would be governed by the same principles that are applicable to the legislation amending the Acts dealing with an assent to a decree.

CONCLUSION

The situation of holders of undivided interests in mortgages in Maryland and neighboring states is acute and demands relief. In order for them to protect themselves, it is essential that the foreclosure of large mortgages by holders of small interests therein be conducted upon reasonable notice to the mortgagors and other holders of interests in said mortgages, and in an orderly proceeding wherein the foreclosure decree is based upon proper proof of interest and default. The Maryland Legislature meets again during the year 1935 and without a construction of this statute by this Court, it will necessarily be handicapped in arriving at a proper solution of this pressing problem.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a Writ of Certiorari and further reviewing and reversing the decision in said case.

JAMES THOMAS,

WILLIAM L. MARBURY, JR.,

Counsel.

APPENDIX

Acts of the General Assembly of Maryland of 1898, Chapter 123, Section 720.

Article 4 of the Code of Public Local Laws of Maryland (1930 edition), entitled "Baltimore City", subtitle "Mortgages", Section 720.

720. In all cases of conveyances of lands or hereditaments or of chattels real, or goods and chattels personal, situate in the said city, wherein the mortgagor shall declare his assent to the passing of a decree for the sale of the same, it shall be lawful for the mortgagee or his assigns at any time after filing the same to be recorded, to submit to either of the Circuit Courts of Baltimore City the said conveyances or copies thereof, under seal of the Superior Court; and the Circuit Court to which the same is so submitted, may thereupon forthwith decree that the mortgaged premises shall be sold at any one of the periods limited in said conveyances for the forfeiture of said mortgages or limited for a default of the mortgagors, and on such terms of sale as to the said court may seem proper, and shall appoint by said decree a trustee or trustees for making such sale, and shall require bond and security for the performance of the trust as is usual in cases of sales of mortgaged premises.

Acts of the General Assembly of Maryland, Special Session, 1933, Chapter 56.

AN ACT to add a new section to Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), entitled "Baltimore City", sub-title "Mortgages",

said new section to be known as Section 720A and to follow immediately after Section 720 of said Article, relating to securing decrees under mortgages containing an assent to such decrees for a foreclosure sale.

WHEREAS, Under the aforesaid Section 720, as the same has been construed by the Court of Appeals of Maryland, a holder of a fractional interest, no matter how small, in a debt secured by a mortgage, may now secure a decree under the assent to such decree contained in such mortgage, and upon any default in such mortgage, the trustee named in said decree may foreclose the same, even though such foreclosure be against the wishes of the holders of the remainder of said debt secured by said mortgage; and

WHEREAS, By reason of the prolonged business depression, there has been an abnormal deflation of real and leasehold property values in Baltimore City, and any precipitate foreclosure would affect seriously the investment in such mortgage, perhaps injuring irrevocably the safety of the investment; and

WHEREAS, By reason of the aforegoing and other adverse conditions, an emergency is hereby declared to exist as a matter of Legislative determination, necessitating Legislative intervention by the enactment of the provisions hereinafter prescribed, and their application during such emergency; now therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and the same is hereby added to Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), title "Baltimore City," sub-title "Mortgages," said new section to be known as 720A and to follow immediately after Section 720, and to read as follows:

720A. In all cases submitted to either of the Circuit Courts of Baltimore City for the passage of a decree as provided for in Section 720 aforesaid, no such decree shall hereafter be passed during the period of emergency hereinafter declared, unless such application is made or concurred in by the record holders of not less than 25% of the entire unpaid mortgage debt, it being hereby declared to be the intent of this Section during the period this Section is effective, that the holder or holders of a fractional interest in an entire mortgage debt of less than 25% of the entire interest, shall not have recourse to the summary and exparte remedies given under Section 720. Where any holder of a fractional interest in an entire mortgage debt is an infant or otherwise incompetent, such consent may be given by his guardian or committee as the case may be, or if there is no such guardian or committee, then such consent may be given by his next friend, and any consent so given shall be as valid and effective for the purposes of this Act as if such holder were not under any disability.

SEC. 2. *And be it further enacted,* That the period of the emergency hereinbefore declared as a matter of Legislative determination, shall be the period of time from the date this Act takes effect to the first day of June, 1935.

SEC. 3. *And be it further enacted,* That this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and having been passed upon by a yea and nay vote, supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved December 15, 1933.